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Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns

Addendum

Follow-up country recommendations: Turkey

Comments by the State on the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*

* Reproduced as received.

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Comments for the Government of Turkey to the Follow-up report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns on the mission to Turkey.

The following document represents the views and comments of the Government of Turkey in respect of the Follow-up report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, on the mission to Turkey from 26 to 30 November 2012.

It is considered that it should be beneficial to convey the following additional information regarding Clause B of the 4th Chapter of the report which will be submitted by the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions about Turkey in the 29th Session of the Commission on Human Rights which will be organized in 2015.

As the duration of the National Action Plan on Combating Violence against Women (2012-2015) referred in the 40th Paragraph expires by the end of this year, updating activities of the National Action Plan on Combating Violence against Women have been started for 2016 and 2019. The new Action is aimed to be inclusive of the progress recorded in national and international legislation, strong commitments and liabilities in terms of relevant institutions and be one that has a more binding power.

- A "Cooperation Protocol on the Pilot Implementation of the Technical Surveillance within the scope of Combating Violence against Women" was signed on March 8, 2015 among the Ministry of Family and Social Policies, the Ministry of Justice and the Ministry of Interior. The pilot application has been started in Ankara and İzmir. The pilot application started the "electronic bracelet" practice which is an active model in which the victims of violence as well as the perpetrator are both monitored at the same time.
- The "Impact Analysis Study of the Law No. 6284" which aims to measure the effect and efficiency of the Law holding interviews with the victims of violence, men perpetrators of violence and the law implementers in relation to the Law No. 6284 on Protection of Family and Prevention of Violence against Women, which has been in effect since 2012 via qualitative and quantitative methods. The evaluations are still continuing regarding the Impact Analysis Study, which is planned to be completed by the first half of 2015. It is planned to introduce improvements to the national legislation and implementation processes in parallel to the opinions and recommendations submitted in the Impact Analysis study.

It is deemed appropriate to add the following paragraph to the 44th Article of the Clause B of the 4th Chapter to be followed after the first sentence:

The project is addressing coordination and quality of shelter service provisions, training for service providers and public awareness raising activities. Therefore, this project can be characterised as a capacity building, training and cooperation project. Expected results also include the enhanced collaboration by central and local governing bodies and local NGOs for improved mechanisms to combat violence against women in 26 project provinces. In addition, under the Grant Component of the project, there have been grants given to civil society organizations for 19 projects in 11 provinces to strengthen the capacity combating violence against women.

Besides, another project "Enhancing the Protective Measures for Women Subjected to Violence: Electronic and Monitoring Supply of Equipment" have been implementing with the aim of purchasing vehicles (completed) for shelters and evaluation of pilot electronic monitoring system application (ongoing).

The statement "Any staff member taking charge in counterterrorism is provided with the Basic Training on Counterterrorism, Training on Police Defence Tactics and Course on Methods of Arrestment and Taking into Custody, and the Course of Human Rights is contained in the Curriculum" has been added verbatim as 22nd paragraph. However, it is seen that whether the training curriculums comprise international principles or not, and more detailed information on the trainings are required by the Special Rapporteur.

Within this framework the personnel in charge in the Central and Provincial Units of the Counterterrorism Department are enabled to participate in the in-service courses regularly in coordination with the Department of Counterterrorism for the purpose of ensuring that they will perform their duty in line with preventing the acts deemed terrorist crimes, protecting personal rights and freedoms as well as public order and security, and public peace and within the framework of an understanding of duty respectful to the principles of state of law and human rights. The curriculums contain subjects on European Council, European Convention on Human Rights, Universal Declaration of Human Rights and European Court of Human Rights.

It is recommended in the Rapporteur' s Additional Follow-up Report that offering refresher courses would be beneficial for the competent personnel to use Nonlethal Gas and Defence Guns which they have taken course on. Regarding this, the whole personnel competent to use Tear Gas and Defence Guns, and the ranked personnel competent to give order for their use have been offered advanced training (12678 in total) in distance, in smart class environments and onsite as in-service training between the dates of 25th March-05th April 2015.

Besides studies on regulating the "Draft Directive on Using Tear Gas and Defence Guns and Related Equipment and Ammunition" to arrange general principles and procedures to using tear gas and defence guns in the inventory of the Riot Police are continuing. "The Directive on the Operational Principles and Procedures in Assemblies and Demonstrations for the Personnel Charged in Social Events" has been published for the purposes of possessing a countrywide standard application and ensuring a proportionate use of force by police through setting forth the stages of using force, the technique-tactic adjustment to be used and means of using force in line with the plans of prevention and intervention to be prepared, in coordination with the other units, before the social event organized unlawfully or post facto organized unlawfully or transformed subsequently into an unlawful form, and needing to be responded by Riot Police and other related units. In the mentioned directive, studies of amendments are continuing for the principle of proportionate use of force to disperse the demonstrators at the stages of use of force in case of any resistance by the protesters to disperse despite the warning performed by security forces during the assemblies and demonstrations.

Possible comments on related articles in the unedited version of the follow up report to the recommendations contained in Mr Christof Heyns's country visit report to Turkey have already been taken into consideration by Turkish officials as mentioned in his letter dated 19 March 2015. The possible comments made on the articles below are as follows:

Article 66: Turkey needs to make sure a working independent complain mechanism, as recommended by the Rapporteur in this article, in preventing a culture of impunity against public officials.

Article 71: Prosecutorial and judicial discretion needs working properly in any country let alone Turkey as it is essential to maintain it for a democratic society based upon the rule of

law. Turkey is in need of taking serious measures in this matter as recommended by the Rapporteur in this article though the claim for the lack of accountability of Turkey in this matter is somehow needs further investigation.

Article 72: As for concerns mentioned in this article Turkey is trying to resolve possible wrongs made against people. However the concerns relating to the public officials receiving lighter sentences when found guilty of tortures, ill-treatment or fatal shootings, in my view, need much deeper investigation by the Rapporteur. Recommendations made by the Rapporteur are also significant.

Article 73: The Rapporteur has every freedom and right to make his personal comments relating to the Article 29 of the Criminal Code. However it is up to Turkish judges how to interpret the article 29 of the Criminal Code as it is obvious that it establishes the mitigating factors. Hence any rule in the law can be misinterpreted or misused if it is an abstract and general one. However, there is a working appeal system to prevent these kind of misuses in Turkish Criminal Justice as mentioned by the Rapporteur himself in his report.

Article 74: In this article the Rapporteur is absolutely right that the appeal remedies may be hindered further by workload and case backlog in the judicial system. Therefore the district and regional courts have been established though they have not started to work yet due to the lack of qualified staff.

As for the conclusion there might be/are lack of practising appropriate measures to prevent some misuses and wrongs in the Turkish Criminal Justice System. However some of the concerns of the Rapporteur need further investigation. Some of the concerns are not related only to prosecutorial and judicial discretion, they are also deeply related to the cultural and democratic issues as every individual needs to prioritize those values in their life to establish a democratic society. It might take time to do so although Turkey is trying her best to make sure the international human rights standards are up to the level expected. Therefore time and education are needed for Turkey developing towards a more democratic society. Most recommendations suggested by the Rapporteur are welcome to be implemented although some issues and concerns raised in the report are discussible and need further investigation as they do not reflect the whole facts of the matters.

Amendment 1 by the Committee on Equal Opportunity for Women and Men

Taking into consideration following contribution for the 40th Paragraph:

It should be stated that Turkey is the first state which signed and ratified the Convention on Preventing and Combating Violence against Women and Domestic Violence, also known as Istanbul Convention.

Amendment 2 by the Committee on Equal Opportunity for Women and Men

Amending the 43rd Paragraph:

Amending the clause "infrastructure" in the first sentence of the 43rd Paragraph as "legal and administrative infrastructure" which will be more accurate expression.

Amendment 3 by the Committee on Equal Opportunity for Women and Men

Taking into consideration following contribution for the 45th Paragraph:

The Special Rapporteur recommended that Turkey enact comprehensive and specific legislation on hate crimes in accordance with international standards and review legislation to include language sensitive to gender identity and sexual orientation. Here, it can be said

that the Turkish Penal Code contains several provisions on hate crimes, such as Article 115, 125/3, 216 even if there is no specific legislative regulations for such crimes.

Moreover, within the context of the Project (Fostering an Enabling Environment for Gender Equality in Turkey) carried out in cooperation with the UN Women, the Committee on Equality of Opportunity for Women and Men as a standing committee of the Grand National Assembly of Turkey has reviewed thirty one acts in the fields of education, health, local governments, family-woman-child, political life, organizational laws, media, and employment from the gender equality point of views.

Amendment 4 by the Committee on Human Rights Inquiry

Amending Appendix A.7 as follows:

"The Committee on Human Rights Inquiry at the Grand National Assembly of Turkey adopted Inquiry Report on Uludere Incident in the date of 27th March, 2013 which was shared with the public. The Committee obtained all the information and evidence relating to the event that was included in the report in an objective and transparent manner. Besides, including the dissenting opinion given by MPs from the Opposition on the report was shared with the public.